

MINUTES OF APRIL 16, 2012

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 16, 2012, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order a 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members Mrs. Susan Isaacs – Chief Zoning Inspector, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of April 2, 2012 as circulated. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Finding of Facts of March 19, 2012 and April 2, 2012. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

PUBLIC HEARINGS

Case No. 10959 – James R. Nichols – northeast of Road 273A (Bald Eagle Road) north of 1st Street, being Lots 19 & 20 within Bay Vista development.

A variance from the rear yard and front yard setback requirements.

Mrs. Isaacs presented the case. Barrett Edwards, Attorney, was present on behalf of the Applicant, with James Nichols, who was sworn in and testified requesting a 0.97-foot variance from the required 6-foot rear yard setback requirement for an existing pool and a 14.27-foot variance from the required 30-foot front yard setback requirement for an existing deck; that they submitted pictures and copies of building permits and Certificate of Compliances that were issued for the pool and deck; that he is selling the property and a survey done for settlement showed the encroachment; that without the variances he will lose the sale; that the cost to relocate the pool and deck is approximately \$45,000; that an old survey showed the existing fence as the property line; that the current survey shows the fence is not on the property line; that there are similar decks in the development; that it is a very shallow and narrow lot; that the variance will enable reasonable use of the property; that he hired a builder to construct the deck and believed the setback requirements were met; that the builder was Duane Emerick; and that he confirmed the testimony.

The Board found that 1 party appeared in support of the application.

The Board found that no parties appeared in opposition to the application.

Mrs. Isaacs stated that the office received 3-letters in support of the application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 10959 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The property is narrow and shallow which makes it unique;
2. The variance is necessary to enable reasonable use of the property;
3. The variance, if granted would not alter the character of the neighborhood;
4. The difficulty was not created by the Applicant;
5. The variance sought is the minimum necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 10960 – Gerry Royal – southwest intersection of Old Sailor Road and North Poplar Street.

A special use exception to operate a daycare facility.

Mrs. Isaacs presented the case. Gerry Royal was sworn in and testified requesting a special use exception to operate a daycare facility; that she wants to use an existing 30' x 30' building for a daycare center; that she will care for approximately 24-children; that the age of children is infant to toddler age only; that the hours of operation will be 7:00 a.m. to 6:30 p.m., Monday through Friday; that she will have 4-employees; that there is adequate parking; that the property is fenced in and the play area is also fenced in; and that there is no shed on the property.

The Board found that 4-parties appeared in support of the application.

The Board found that no parties appeared in opposition of the application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception No. 10960 for the requested special use exception based on the record made at the

public hearing since the daycare will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 10961 – Ralph A. Pini, Jr. – east of John J. Williams Highway west of White Pine Drive, being Lot 69 Phase II within Pines at Long Neck development.

A variance from the wetlands setback requirement.

Mrs. Isaacs presented the case. Christine and Ralph Pini, Jr. were sworn in and testified requesting a 6-foot variance from the required 20-foot wetland setback requirement; that they placed the shed on the lot 12-years ago without a building permit; that the shed cannot be moved into compliance due to the location of the dwelling and existing trees; that there are other sheds in the development closer to the wetlands; that the Homeowner's Association supports the application; and that the shed is the only storage they have.

The Board found that no parties appeared in support of or in opposition to the application.

Mrs. Isaacs stated that the office received 1-letter of support to the application.

Mr. Mills stated that he would move that the Board recommend approval of the Variance Application No. 10961 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The wetlands setback requirement makes it unique;
2. The difficulty was not created by the Applicant;
3. The variance if granted, will not alter the character of the neighborhood;
4. The variance will enable reasonable use of the property;
5. The variance is the minimum variance to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variance be **granted with the stipulation that the shed will not be placed on concrete slab or permanent foundation for the reasons stated**. Motion carried 5 – 0.

The vote by roll call: Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills - yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 10962 – Stephen K. & Ruth Ann Hays – west of County Road 600 (St. Johnstown Road) approximately 0.55 miles south of Route 16 (Beach Highway).

A special use exception to place a multisectional manufactured home that is more than five (5) years old.

Mrs. Isaacs presented the case. Stephen and Ruth Ann Hays were sworn in and testified requesting a special use exception to place a multisectional manufactured home that is more than five (5) years old; that they plan to place the unit on her parents property; that a lot has been subdivided; that they plan to move her parents in with them; that the existing dwelling is in poor condition; that the unit is a 2006 and missed the age requirement by 8-weeks; that the unit measures 28' x 80' and is in excellent condition; that the unit will be on a block foundation; that they have obtained all the necessary permits except the placement permit for the unit; that they were unaware of the age requirement until they applied for the placement permit; and that they submitted pictures.

The Board found that no parties appeared in support of or in opposition to the application.

Mr. Mills stated that he would move that the Board recommend approval of the Variance Application No. 10962 for the requested variance based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call: Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway - yea.

Case No. 10963 – Anthony J. Rydzewski – east of Road 297 (Oak Orchard Road) southeast of Mercer Avenue, being Lot 16 within Charles C. Fagan and Delaware Oyster Farms development.

A variance from the side yard and front yard setback requirements.

Mrs. Isaacs presented the case. Anthony Rydzewski was sworn in and testified requesting a 1.8-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling, a 4.1-foot variance from the required 5-foot side yard setback requirement and a 26.1-foot variance from the required 30-foot front yard setback requirement for an existing shed; that the shed is non-conforming; that he purchased the lot 1-year ago; that the lot is very narrow in size; that the proposed 1-story dwelling is desired for retirement age and will not meet the side yard setback requirement; that the request is the minimum variance to afford relief; that the variance will enable reasonable use of the property; that it will not alter the character of the

neighborhood; and that he understands if he ever replaced the shed it must meet required setback requirements.

The Board found that 4-parties appeared in support of the application.

The Board found that no parties appeared in opposition to the application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 10963 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The property is unique due to its narrowness;
2. The variance will enable reasonable use of the property;
3. The variance, if granted will not alter the essential character of the neighborhood;
4. The variance is the minimum variance to afford relief;
5. The need for the variance was not created by the Applicant.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 10964 Juanita J. Roberts – southwest of Road 38, 1,960 feet west of Greentop Road.

A variance from the maximum square footage required for a parcel.

Mrs. Isaacs presented the case. Juanita Roberts and Robert Nash were sworn in and testified requesting a 5,471-square-foot variance from the required 32,670-square footage requirement for a parcel; that she acquired the land in 1987; that they built chicken houses on the property; that her husband passed 3-years ago and she can no longer run the farm on her own; that her grandson will care for the chickens; that she plans to build a smaller dwelling on the proposed lot; that her daughter also lives nearby; and that the lot cannot meet the size requirement due to the location of existing structures on the property.

The Board found that no parties appeared in support of or in opposition to the application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 10964 for the requested variance based on the record made at the public hearing and for the following reasons;

1. The property is unique due to the existing farm;

2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance, if granted will not alter the character of the neighborhood;
5. The variance is the minimum variance to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 10965 – Tanya Gibbs – east of Road 285 (Beaver Dam Road) approximately 2,500 feet south of Road 287 (Kendale Road).

A special use exception to operate a daycare facility.

Mrs. Isaacs presented the case. Tanya Gibbs was sworn in and testified requesting a special use exception to operate a daycare facility; that she has run a small daycare for 8-years, that the last 5-years have been from this location; that she wants to increase the number of children from 9-children to 12-children; that she is the primary breadwinner in her household and they need the additional income since her husband is out of work currently; that there are other daycare facilities in the neighborhood; that there is adequate parking; that there will be no changes made to her residence; that she can also hire staff to help supervise the children; and that the children range in ages from infant to 12-years of age.

The Board found that 2-parties appeared in support of the application.

The Board found that no parties appeared in opposition to the application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 10965 for the requested special use exception based on the record made at the public hearing since the use will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call: Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 10966 – Philadelphia Pentecostal Church – east of Road 213 (Old State Road) north of Pentecostal Street, being Lot 2 within Northwood Acres development.

A special use exception for a homeless shelter.

Mrs. Isaacs presented the case. Bishop Major Foster and Vonda Deputy-Smith were sworn in and testified requesting a special use exception for a homeless shelter; that they were approved for this use in 2009; that they were not aware the approval had expired; that since the approval in 2009 they have been obtaining other agency approvals and they can finally obtain the building permit to construct the shelter; that they currently have a shelter for women and children; that the proposed shelter is for a combined population; that the shelter is transitional housing and can allow a resident to stay anywhere from 30-days to 60-days; that in the current shelter residents can stay anywhere from 9-months to 1-year; and that there are 2-employees per shift and parking for up to 8-vehicles.

Wayne and Lori Skyler were sworn in and testified in opposition to the application and stated that they live adjacent to the proposed shelter; that he was in Iraq from 2003 to 2005; that he was not aware of transitional housing in the area; that he has had no problems with residents in the existing shelter; and that he is concerned about the proposed use.

In rebuttal, Bishop Major Foster, stated that the church owns all of the property surrounding the shelters.

The Board found that 2-parties appeared in support of the application.

The Board found that 2-parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception No. 10966 for the requested special use exception based on the record made at the public hearing since the use will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call: Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 10967 – Deborah Case – east of Road 36 (Old Shawnee Road) approximately 1,100 feet north of Route 620 (Abbott's Pond Road).

A special use exception to operate a daycare facility.

Mrs. Isaacs presented the case. Deborah Case was sworn in and testified requesting a special use exception to operate a daycare facility; that she would like to open a large family daycare; that she plans to care for children ages infant to 12-years old; that she is retiring from the Office of Child Safety; that her hours of operation will be 7:00 a.m. to 5:30 p.m., Monday through Friday; that there is an existing building on the property that was once used a small nursing home; that there is adequate parking; and that the neighbors have no objection to the application.

The Board found that 1-party appeared in support of the application.

The Board found that no parties appeared in opposition to the application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception No. 10967 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 10968 – Garry and Alice Ground – north of Road 361 (Muddy Neck Road) east of Daina Drive, being Lot 19 within Ocean Way Estates development.

A variance from the front yard, side yard, and rear yard setback requirement.

Mrs. Isaacs presented the case. Garry and Alice Ground were sworn in and testified requesting a 1.6-foot variance from the required 30-foot front yard setback requirement and a 0.5-foot variance from the required 10-foot side yard setback requirement for an existing dwelling, a 0.8-foot variance from the required 30-foot front yard setback requirement and a 0.3-foot variance from the required 5-foot side yard setback requirement for an existing shed, a 4.7-foot variance from the required 5-foot side yard setback requirement and a 4.8-foot variance from the required 5-foot rear yard setback requirement for an existing shed; that they purchased the lot 10-years ago; that they built the dwelling and a shed; that 6-years ago they built another shed; that last December they built an addition on the dwelling; that when they applied for the Certificate of Compliance they discovered the addition did not meet the setback requirements; that there have been two surveys done on the property; the second survey showed the pin in a

different location; that the existing dwelling occupies the entire buildable area; that the lot is unique in shape; and that they submitted 1-letter in support of the application.

The Board found that 2-parties appeared in support of the application.

The Board found that no parties appeared in opposition to the application.

Mrs. Isaacs stated that the office received 6-letters in support of the application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 10968 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The property is a unique shape;
2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance, if granted will not alter the character of the neighborhood;
5. The variance is the minimum variance to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Meeting Adjourned 8:55 p.m.